IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 3391 of 2007()

CRA.148/2006 of SESSIONS COURT, KALPETTA
ST.3041/2004 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

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REVN. PETITIONER: APPELLANT/ACCUSED

P.P.ISSAC SON OF PAILI PUTHIAVEEDU,
PATHIRIPPALAM, MEENANGADI, WYNADU.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS: COMPLAINANT

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1. K.BHASKARAN, KARUMATTU VEEDU,
KALLINKARA PO., CHEERAL, WYNADU.

2. STATE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3391 OF 2007 D

Dated this the 25th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.3041/2004 on the file of the J.F.C.M.-I, Sulthan Bathery challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner submitted that the cheque in question for Rs.1,50,000/- is dated 16.2.04 which is 10 years after Ext.D2 publication by the revision petitioner in the 'Mathrubhumi' daily dated 17.2.94 to the effect that he had lost two signed blank papers and two signed blank cheques kept in his bag and that as on the date of the cheque the bank account stood closed. Both the courts have found that Ext.D2 publication in the 'Mathrubhumi' daily was a clever device conceived by the revision petitioner who is an abkari contractor, to wriggle out of his liability for the cheque to be issued thereafter. On the evidence before court it cannot be said that the above conclusion reached by the courts below is unsustainable or improbable. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against

the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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